



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CAMPAIGN & POLITICAL FINANCE

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MARY F. MITIGUE
DIRECTOR

June 3, 1992
AO-92-11

John C. O'Neil, Esq.
60 Rock Street
P.O. Box 1150
Fall River, Massachusetts 02722

Re: Public Employee/Candidate
Fundraising Restrictions

Dear Mr. O'Neil:

This letter is in response to your April 30, 1992, letter requesting an advisory opinion regarding the above referenced matter.

You have stated that you are a Special Assistant District Attorney in Bristol County employed by the Commonwealth of Massachusetts. You have also filed nomination papers for the office of Governor's Council, First District. You have asked for guidance regarding any fundraising activity that you or your campaign committee ("Committee") may participate in and whether there are particular restrictions on your Committee by virtue of your position with the District Attorney's Office.

M.G.L. c.55, s.13 provides, in part:

No person employed for compensation, other than an elected officer, by the commonwealth or any county, city or town shall directly or indirectly solicit or receive any gift, payment, contribution, assessment, subscription or promise of money or other thing of value for the political campaign purposes of any candidate for public office or of any political committee, or for any political purpose whatever, but this section shall not prevent such person from being members of political organizations or committees. The soliciting or receiving of any . . . contribution . . . by a non-elected political committee organized to promote the candidacy for public office of a person so employed for compensation by the commonwealth or any county, city or town, shall not be deemed to be a direct or indirect solicitation or receipt of such contribution by such person; provided, however, that no . . . contribution. . .

may be solicited or received on behalf of such a person from any person or combination of persons if such person so employed knows or has reason to know that the person or combination of persons has an interest in any particular matter in which the person so employed participates or has participated in the course of such employment or which is the subject of his official responsibility.

Nothing in section 13 or any other campaign finance law or regulation prohibits persons employed for compensation (hereinafter "public employees") from seeking public office. However, since you are such a public employee, you would be subject to the prohibition set forth in section 13 and noted above. For general guidance regarding this prohibition I refer you to the Office's "A Guide To Political Activity For State, County And Municipal Employees" as well as the Office's Interpretative Bulletin OCPF-IB-91-01. Copies of both documents are included for your information.

In addition to the information contained in the above referenced material, I note that it is the long-standing opinion of this Office that the use of a public employee's or candidate's name in the letterhead of a solicitation letter, e.g., "Committee to Elect John O'Neil" or in a similar fashion, is not deemed to constitute an indirect solicitation by the public employee/candidate but by his or her political committee. As the Office concluded in AO-88-08:

The use of [a public employee/candidate's] name in the letterhead in such a fashion would be permitted. Furthermore, the committee would not be prohibited from mentioning [the public employee/candidate's] name in the letter, provided it is not used in any way which would suggest a solicitation by [the public employee/candidate].

I would also refer you to the first opinion ever issued by this Office, AO-82-02, a copy of which is also enclosed. That opinion concerned an Assistant District Attorney and concluded that it would be a violation of the latter portion of section 13 for the Assistant District Attorney or his political committee:

To solicit and/or receive contributions for your political campaign from attorneys who have a direct and substantial interest in matters in which you participate in your official capacity or which are the subject of your official responsibility. . .

The opinion also noted that there would undoubtedly be other persons who may have "an interest in a particular matter" before the Assistant District Attorney and, therefore, from whom contributions should not be solicited or received.

John C. O'Neil, Esq.

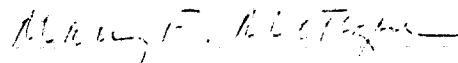
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You and your political committee should also be aware of M.G.L. c.55, ss. 14-17 of the campaign finance law which are set forth in full in the enclosed Guide.

This opinion has been rendered solely on the basis of representations made in your letter and solely in the context of M.G.L. c.55. If you have questions regarding the conflict-of-interest law, M.G.L. c.268A, you should consult the State Ethics Commission.

Very truly yours,



Mary F. McTigue
Director

Enclosures